Tobacco Cases

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

FLORA MAE BROWNER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86692A
	)	
R.J. REYNOLDS TOBACCO COMPANY,	)	
	)	
Defendant.	)	

DEPOSITION OF GERARD R. GUNZENHAUSER

Los Angeles, California

February 21, 1984

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

FLORA MAE BROWNER, Plaintiff,	)	
vs.	)	No. 186692A
R.J. REYNOLDS TOBACCO COMPANY, Defendant.	)	

Deposition of GERARD R. GUNZENHAUSER, taken on behalf of the Plaintiff at 700 S. Flower Street, 30th Flr., Los Angeles, California on Tuesday, the 21st day of February, 1984 at 10:00 a.m. before LINDA LEE ELFORD, CSR. No. 4715, a Notary Public within and for the County of Los Angeles, State of California, pursuant to Notice.

APPEARANCES OF COUNSEL:

For the Plaintiff: GEORGE KILBOURNE, ESQ.
1304 Willow Street
Martinez, CA 94553

For the Defendant: LAWLER, FELIX & HALL
BY: THOMAS E. WORKMAN, JR., ESQ.
F. JOHN NYHAM, ESQ.
700 S. Flower Street, 30th Flr.
Los Angeles, CA 90017

Also Present: Mr. Max H. Crohn, Jr.

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I N D E X

WITNESS	EXAMINATION
GERARD R. GUNZENHAUSER	
(By Mr. Kilbourne)	4

(No exhibits offered.)

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GERARD R. GUNZENHAUSER,

called as a witness by and on behalf of the Defendant, having having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KILBOURNE:

Q Would you state your name, please.

A Gerard R. Gunzenhauser, G-u-n-z-e-n-h-a-u-s-e-r, Jr.

Q Where do you live, sir?

A [DELETED]

Q You are presently employed, are you?

A I am.

Q By whom?

A I am employed by R.J. Reynolds Tobacco Company.

Q And what is your present title, if you have one?

A I am vice-president, finance.

Q What is the relationship between R.J. Reynolds Tobacco Company and R.J. Reynolds Industry or Industries or whatever the exact name is?

A R.J. Tobacco Company is a wholly owned subsidiary of R.J. Reynolds Industries.

Q And what is the full technical name of R.J. Reynolds Industries? Is it Company, Inc. or what?

A R.J. --

Q If you don't know, don't guess.

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A I don't.

Q All right. That's fine.

Have you ever been employed by R.J. Industries?

A No.

Q And your employment for the entire time has been with R.J. Reynolds Tobacco Company, that you have been with the organization that is.

A For the entire time that I have been employed by R.J. Reynolds Tobacco Company, I have been employed by R.J. Reynolds Tobacco Company.

Q I assume from your response you may have been associated with some associate company or other subsidiary. What was that, sir?

Let me withdraw that, and just ask this: When were you first employed by R.J. Reynolds Tobacco Company, or one of the associated companies?

A In October of 1968 I was employed by R.J. Reynolds Foods, Inc., which at that time was a wholly owned subsidiary of R.J. Reynolds Tobacco Company, and this unit had its headquarters at that time in New York City.

Q And subsequent to that time?

A In, I believe it was April or May of 19 -- it was 1976, April or May, that I joined RJR Tobacco International.

Q And RJR International was a wholly owned subsidiary of --

A R.J. Reynolds International is a wholly owned subsidiary of RJR Industries which then, I guess, I misstated before. I didn't realize that I ever -- Well, I never worked

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directly as a RJR Industries employee. I was always in a subsidiary company.

Anyway, I was with RJR Tobacco International until January of 1979, when I joined Reynolds Tobacco.

Q When did the change take place of R.J. Reynolds Tobacco Company from being a wholly owned -- or being the owner of RJR Foods, Inc., to being a wholly owned subsidiary of RJR Industries?

A I don't recall specifically. It was in the early '70's. Shortly after the creation of RJR Industries.

Q Is this when there was some type of reorganization that reorganized the structure of the company for business purposes?

A In the early '70's there was a reorganization, and RJR Industries emerged as the parent of various operating units.

Q And I take it prior to that time R.J. Reynolds Tobacco Company had been in effect the parent company of the subsidiaries?

A I believe that's correct. That's my understanding.

Q All right. Without holding you to it, I realize you may not have been involved in these changes at the time they occurred, but just for my own edification to give me a little background.

Now, has RJR Tobacco Company existed in that -- under that name for roughly half a century?

A Yes. Yes. As R.J. Reynolds Tobacco Company, I

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think going back to 18 --

Q 1913, I believe you said in the interrogatories.

A No. It was earlier than that.

MR. WORKMAN: 1899.

THE WITNESS: 1899, I think is the date.

MR. KILBOURNE: I was recalling answers to interrogatories with respect to New Jersey being the state of incorporation.

MR. WORKMAN: State of incorporation.

THE WITNESS: That's right.

Q BY MR. KILBOURNE: And I take it, then, that sometime in the '70's RJR Tobacco Company -- all the stock then became owned by a newly created entity, RJR Industries.

A That's my understanding.

I am not conversant with the details.

Q Right.

Now, you indicated you were vice-president in charge of finance of the tobacco company. I take it you have been involved in finance in the various subsidiaries. Can you --

A I have.

Q Can you give us just a very brief rundown on your background with the company?

A Going back to the R.J. Reynolds Foods, I began with the foods company as the financial manager for one of the branch groups, became corporate budget manager and then financial planning and analysis manager during the course of my career up through 1976 with the company.

I went to Tobacco International. I was area

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financial director with financial responsibilities for tobacco operations in the Latin and South American market, and in the Asia-Pacific areas.

In January of 1979, I became comptroller of Reynolds Tobacco Company. Somewhere in between there and last May I was promoted to vice-president and comptroller, and last May I was promoted to vice-president of finance, chief financial officer.

Q Have you at any time held any office in any of the other subsidiaries or in RJR Industries?

A No.

Q To whom do you report, then?

A I report to the executive vice-president of finance and administration and materials management, Robert Emken, E-m-k-e-n.

Q Do you know who he is employed by?

A R.J. Reynolds Tobacco Company.

Q Does he have any office or position with the parent company?

A Not to my knowledge.

Q With respect to how the companies actually are set up and operated, -- before I get into that, though, could you, first of all, give me your age?

A I am 47.

Q And your educational back ground?

A I have a B.B.A., Bachelor of Business Administration, from Iona College, in New Rochelle, New York. I did undergraduate -- I mean I did graduate work at Iona

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College and at New York University Graduate School of Business Administration.

Q Have you had any courses since then?

A Yes. I participated in a senior financial management program at the Colgate-Dardin School of Business, at the University of Virginia, and participated in a few odd seminars and things like that.

Q How were you employed when you left college until the time you joined Reynolds or one of the associate companies? Just generally, not specifically.

A Well, I got my undergraduate degree and pursued my graduate studies while I was working. From 1955 to 1968, when I joined Reynolds Foods, I was employed by General Foods Corporation, and I did my undergraduate work during that period, completing it before I left General Foods, and the graduate studies kind of overlapped the end of my career with General Foods and the early days with Reynolds.

Q Do you know or are you aware of any other changes other than the one that we have discussed in the corporate structure of R.J. Reynolds Tobacco Company?

A I'm not sure I understand the question.

Q Well, I just -- What I wanted to know was whether or not you were aware of whether or not there has been another change in structure as we have already discussed at any time in the history of R.J. Reynolds Tobacco Company?

MR. WORKMAN: I don't think he has testified that there was a change in the corporate structure of R.J. Reynolds Tobacco Company. He testified that in the 1970's or somewhere--

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THE WITNESS: Somewhere early '70's.

MR. WORKMAN: -- R.J. Industries was formed and became the parents of R.J. Reynolds.

MR. KILBOURNE: Right.

Q Has there been any other type of change similar to this or a change in structure that you are aware of in R.J. Reynolds Tobacco Company?

A Well, here again, I am not sure -- I'm not sure that I understand fully the scope of your question.

Like most companies, from time to time there are changes within the companies that come into and go out of existence for, perhaps, tax reasons and so forth, and I'm -- I don't know if that is what you are referring to, and I don't really have in mind a complete list of those.

If there is anything -- I just -- I am having difficulty framing an answer to the question because I don't really understand the scope or the breadth or the narrowness of it.

Q I'm not sure that it is all that relevant, but it could be.

Do you know of any one in the company who would have that information; such as the secretary, or the person in charge of the legal department on the board, for instance?

A Well, I am sure that if -- Again, the problem is in understanding the question in terms of what change means, taken very broadly or very narrowly,

I think legal counsel would be able to provide that kind of information.

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Q All right.

With respect to internal changes, and I am looking now after World War II, and by internal changes, I mean changes in the lines of communication within the company, division as opposed to departmental breakdown or subsidiaries, have there been any changes to your knowledge in R.J. Reynolds Tobacco Company?

A (No audible response.)

Q Do you understand what I am asking, sir?

A I am afraid I don't. No.

Q All right, then. Let's look at the present structure, and then work back. Maybe that's an easier way to do it.

At the present time the internal structure, as most companies do, have people that they report to in lines of communication that usually end up with some vice-president or executive vice-president on the board, correct?

A (No audible response.)

Q And I take it R.J. Reynolds Tobacco Company has some similar type of business structure organization?

A We do.

Q Could you describe how it exists at the present time for me, sir?

A To make sure I understand, what I will give you is -- to start with is a brief overview of the key functional organization structure of the company.

Q Right.

A All right. Our chairman is Edward A. Horrigan,

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Jr. Our president and chief executive officer is Mr. Gerald Long. Reporting to -- Mr. Long reports to Mr. Horrigan. Reporting to Mr. Long, as best I can recall -- and I am recalling now from memory of the organization charts that I have seen, and the way that I know the structure to be -- vice-president of personnel, John Trulove, T-r-u-l-o-v-e, executive vice-president; George D. Smith -- I can't recall what his specific title is, but he is involved pretty much in community affairs, represents the company on things like United Way and Heart Fund appeals, represents the company in state, local, governmental actions or causes having to do with zoning or permits and things like that, makes speeches for the company when they are called upon, civic occasions and so forth.

Then there is Robert Emken that I referred to before, who is executive vice-president in finance and administration and materials management. His accountabilities include my area, known as finance, the leaf purchasing and general purchasing operations, information systems, leaf processing and storage, and the traffic and distribution covering essentially finished goods.

Another executive vice-president, Hudnall Chistorry, H-u-d-n-a-l-l. He is executive vice-president, manufacturing. I believe that's his title. There may be another add-on at the end of that. But essentially his responsibility is for the production division which processes the tobacco, manufactures to final form finish product. He is also responsible for the energy, energy support services which involve utilities, construction services and so forth, major

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repairs, that type of thing for the plant and equipment.

The next individual is Robert Di Marco -- Dr. Robert Di Marco, who is vice-president of research and development. His accountabilities, I think, are -- essentially those of the development of -- the maintenance of our consumer productsPin the marketplace, the manufacturing of standards and recipes or formulas and so forth used in the manufacture of products.

I am missing some -- Oh, yes. The next slot is EVP of marketing and sales and new products. That position is currently vacant.

Under that particular office is the marketing group which is essentially the brand managers, product managers and so forth that manage the various brand franchises and individual products in the lines, market research activities -- marketing research activities, and the promotional support activities, as well as the field sales organization, and then, of course, the marketing efforts associated with bringing new products to market.

Now, there is the vice-president and legal counsel, Samuel B. Whitt, III, and at this point I can't, quite frankly, remember whether he reports to the president or to the chairman. I'm -- I'm thinking that he reports to the chairman, but I'm not absolutely certain. It is either one or the other.

There is also the director of public -- director of -- I am drawing a blank on his title now.

It is a public affairs post, but I am not sure that that's exactly the name that it's called.

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His name is Paul Bergson, B-e-r-g-s-o-n. That's another slot -- I am not sure whether he reports to -- I can't recall specifically now whether he reports to the president or the chairman, but again, it is one or the other.

There is another vice-president, Charles Tucker, who is a special assistant to the chairman on special projects, and he works on special projects for the chairman, Mr. Horrigan.

Now, when I was talking about EVP marketing and sales, I just remember that I left out one individual that reports there, and that is the director of public issues. The individual -- yes. That function reports to -- that director of public issues reports to that EVP marketing as well.

Now, I am trying to go back over the list that I have just gone through mentally. I tried to take a turn through the organization.

Q Is there a breakdown possibly between operations as opposed to service divisions?

A If I get the gist of your question, within the tobacco company there really isn't any divisional breakdown as such, except perhaps in the marketing area where people tend to work on a cigarette brand or group of cigarette brands as opposed to working on all brands simultaneously, and we do, again, the specialization extends into the special leaf tobacco products group, which is the smoking, chewing tobacco, pipe smoking and little cigar part of it.

Q I see.

Do you make a distinction between those functions

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that are support or service, such as finance, the legal department, manufacturing, things of that nature, as opposed to having those under the specific brand function which you just described?

A Yes. The financial support, for example, we provide financial support to brand management, which means that financial managers or financial analysts will be working on whatever needs to be done on whatever brands.

There is not a -- that's why I said before, there is not a divisional structure. Manufacturing support services is pretty much the same way.

Q Do you, in turn, get assistence from any other organization from Industries or is all of this contained only in the tobacco company?

A There are some staff support services. For example, personnel recruiting, going through the selection process for personnel is done in Winston-Salem centrally by an Industries' corporate personnel function for the tobacco company and for the other operating units that are there in Winston-Salem, that type of thing, for which we are charged, and pay what they claim is a very reasonable cost.

Certain administrative services for the office buildings, those type of things, come among services, employee workplace health care, for example, corporate personnel has a doctor that mans -- and first aid stations that administer on-the-job health care services to employees, pastorial counseling, telecommunications -- and then there is, as with most holding companies, there is certain oversight relationships

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that we have, such as with the corporate treasure's department, which monitors our adherence to the operating policies and procedures set down by Industries, the audit --

Q Audit function?

A -- the audit function. I have an internal audit department that works with the tobacco company.

So there is -- we do get some services, but they tend to be those that are appropriate to a holding company effectively monitoring and so forth.

One exception to that at the moment has to be the computer services which is just an incidental item, but the -- while we have our own information systems department which is responsible for computer programs and so forth, the actual computer center, the data center itself happens to be operated by the Industries' management, which is just a matter of historical -- the way things develop rather than any kind of plan. Of course, again, we pay for those services.

Q Is there any oversight from that level on research and development, other than possibly administrative and audit?

A Well, there is -- there is, of course, the ongoing interest and some level of direction of any parent to a subsidiary. Beyond that there pretty much has been -- the operating units have pretty much functioned on their own in that area up till now.

Most recently, or within the last several months there has been an overall effort simply to look at the researching facilities that exist across the corporate entity, and to make certain that we are avoiding the duplication of

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effort both in investment and people in some common areas and so forth. But it is that kind of oversight.

Q Then what I hear you saying is that anything relating to tobacco or tobacco products is found entirely, then, within RJR Tobacco as opposed to RJR Industries?

A That's true.

Q And RJR Industries, then, is primarily concerned with the other operational aspects of the company having to do with the other wholly owned subsidiaries?

A That's essentially true, yes.

Q To your knowledge, has there been any major change in any of these functions within RJR Tobacco in the last -- well, since World War II?

A Could you tell me what you mean by major changes? I am trying to get a -- because the world has made a hell of a change since World War II.

Q Agreed. But I mean changes having to do with method or mode of operation, ownership of companies. Understandably, there have been changes in personnel, and personalities, obviously, require a lot of this also by way of where one reports.

Give me an example, and I will pursue it if I think it has some relevance, if Mr. Workman will let me.

MR. WORKMAN: In that connection, we didn't make it clear on the record that all objections, except objections as to form of the question, are reserved until the time of trial.

MR. KILBOURNE: Of course.

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MR. WORKMAN: If there is an objection as to form, why, we will make the objection.

MR. KILBOURNE: Of course.

Or if you have any suggestions that would help, I would appreciate those.

MR. WORKMAN: I will give them to you, George.

THE WITNESS: Well, for example, in my own specific area, in the financial area, most recently, within the last three to four years, we have assumed more and more of the functions that had once been provided by Industries in terms of financial services. I am talking about credit and collection, internal audit, which I mentioned before, the accounts payable function. We are more self-sufficient, as it were, and more integrated, and we think a more effective financial organization by having our people able to focus simply on the tobacco company operations, rather than sharing what they do with other units.

The same can be said, I suppose, for the law department. At one time Industries' law department provided legal services to each operating unit on an allocated basis. Sometime within this same period of time there has been a move consistent with the corporate climate to put back into the operating units, or put into the operating units the kind of functions and activities that can best be done there.

Now, within the -- within the organization, there have been, oh, realignments, there has been repositioning, simply to eliminate redundancy.

In a company as large as ours, there is a tendency

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to have duplicate services in the duplicate areas and so forth, particularly in the operations area.

We have tried to streamline, therefore, simply to become a more efficient organization. So those kind of changes have taken place.

I think it fair to say at one time the company's motto was, partly, perhaps, because of where they were located geographically, that they needed to be self-sufficient from a manufacturing supply point of view so that we developed machine shops to insure an uninterrupted supply of spare parts. Well, the world has changed. Now you can reach anyplace in the world practically within a day's time, and spare parts and so forth are not the problem they once were. So we have eliminated those kind of staffs over the years.

So that's -- a lot of it has been simply changing and adapting to the times that we are in.

I have only been with the tobacco company since '79, as I indicated before, only been with the total Reynolds Corporation since '68. I really don't know what the company was like immediately following World War II and up to that point. So I find it difficult to go much beyond the examples I have already given.

Q BY MR. KILBOURNE: With respect to the change that took place in the '70's when Industries was created, do you know whether or not there was a change in the board makeup of the tobacco company?

A I don't know that.

Q Do you know whether or not there was any change in

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the number, or the manner or method of selection of the members of the board?

A You are speaking now --

Q Of the tobacco --

A -- of the board of R.J. Reynolds Tobacco Company?

Q Yes.

A I don't know what occurred at that time.

Q Do you know at this time whether or not any members of the board of the tobacco company sit on the board at Industries?

A At this moment, I don't know. As of this moment, I don't know.

Q Now, in the past have they?

A From time to time, yes.

Q With respect to any research and development function that is handled by the tobacco company, has there always been, to your knowledge over your tenure with Reynolds, a research and development in the tobacco company?

A Yes, there has.

Q What is the main function of research and development?

A I believe, as I have outlined before, my understanding of the primary accountability or mission of the research and development department is to provide support to the various brands and brand styles that are in the marketplace with regard to product specifications, processing techniques that are utilized in the manufacturing process, testing standards to determine the analysis of -- testing standards to

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determine the maintenance of desired performance criteria, analysis of materials used in the process and maintenance of an extensive library of information related to tobacco and tobacco by-products.

Q How long has Mr. Di Marco been the head of that department?

A I can't recall specifically, but it would be approximately two years.

Q Who was the head before that?

A Immediately preceding Dr. Di Marco was Dr. Roy Morris, who was there for a brief period of -- again, I am not exactly sure of the timing, but somewhere between -- somewhere probably two years or less. Prior to that time the individual who headed R&D was -- his name has escaped me at the moment. He's retired now.

Q Do you at this time recall approximately how long he had that function?

A No. I know he was there when I came in 1979, but I don't really know how long he had been there prior to that.

Q Has the R&D department been substantially the same in function, as far as you know, since World War II?

A I really can't -- I really can't say much beyond the '76 period when I was with Tobacco International. Much earlier than that, I'm not sure -- I'm not certain. But my understanding is that essentially it has been about the same during that period.

Q In the event there have been any inquiry into the existence or non-existence of health hazards related to

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smoking, would that have come under the R&D department?

A Let me answer that question this way: I think they would be the ones to ask.

Q All right. That's what I wanted to know, who should I ask that question of.

A I think they would be in a position to answer that question better than I.

Q You think Mr. Di Marco would be in a better position?

MR. WORKMAN: With the question being had there been any inquiry?

THE WITNESS: Had there been any inquiry.

MR. WORKMAN: Yes.

THE WITNESS: I would think that would be the first place -- or the first place to check with, his area.

Q BY MR. KILBOURNE: Now, with respect to this library which you said was maintained, I believe you described it as an extensive library, where is that maintained?

A In Winston-Salem.

Q Is that -- I'm not familiar with the main headquarters, is there some --

A It is in the research and development facility, in Winston-Salem.

Q Do you know how long they have maintained that library?

A No, I don't.

Q I take it it was there when you joined the company.

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A Yes. It was there when I joined the company, and I'm not sure how long it had been there. My understanding is that it is rather extensive, and it has been there for some time.

Q Do you know whether or not they have a computer index to the library?

A I'm not familiar with it, but I believe it is a combination of some rather modern and up-to-date indexing methods and, I suspect, some rather old -- and index cards and archaic methods right now.

MR. WORKMAN: Just like ours.

MR. KILBOURNE: We all have it.

Q Who is the present librarian or person responsible for the ongoing day-to-day maintenance? Do you know?

A I don't know. I don't know.

Q I take it this would be, again, addressed better to Di Marco?

A That would be in Bob Di Marco's area, yes.

Q Do you know of any other place in the company where there would be any literature, either indexed or deposited, relating to possible health hazards relating to the use of tobacco?

A No. I would think the research and development would be the more likely place for that kind of information to be.

Q To your knowledge, does marketing have any function that relates to an evaluation and/or determination of potential health hazards in the use of tobacco products?

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A Not to my knowledge.

Q Is their main function, then, limited, as far as you know, to conducting marketing surveys and things of this nature?

A That's -- that's my understanding, yes.

MR. WORKMAN: That would be one of their functions?

THE WITNESS: Sure.

MR. KILBOURNE: Correct. I mean relating to potential health hazards, if they exist, with the use of tobacco, right.

MR. WORKMAN: Well, read the question back so that there is -- we will know what the question is.

(Whereupon the record was read as requested.)

MR. WORKMAN: The total question was whether the marketing department has any function relating to possible health hazards relating to the use of tobacco products. Isn't that right, George?

MR. KILBOURNE: Yes.

MR. WORKMAN: Okay.

Q BY MR. KILBOURNE: With respect to the executive vice-president, Mr. George Smith, on community affairs, does he have any function, if you know, that relates to dealing with any problems related to potential health hazards of smoking?

A Not to my knowledge.

Q Is there a medical director of the company that -- separate and apart from what we have been discussing here, perhaps a staff function, that is concerned only with health of employees?

A No. The only such function is the one I described

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earlier, is a service of Industries' which is an on-the-job first aid monitoring-illness type of function. It is an Industries function that is provided because of the location where there are several operating units there in Winston-Salem, along with the corporate staff, providing on-the-job health service.

That's the only such position that I am aware of.

Q At the present time, do you know whether or not either RJR Tobacco Company or Industries belongs to any industry organization that have to do with tobacco research or potential health hazards?

A I don't believe R.J. Reynolds Industries belongs to any. R.J. Reynolds Tobacco Company participates in the Council for Tobacco Research, which is the industry supported -- -- the tobacco industry's supported research effort, and have done so for a number of years; and I don't recall how long it has been, but it has been a number of years.

Q Does the Council for Tobacco Research concern itself with problems other than growing tobacco or manufacturing tobacco products?

A Yes. They are primarily related to the investigation of health-related concerns associated -- that have been associated with the use of tobacco products.

We support -- as Reynolds Tobacco, we are involved in a number of growing -- agronium -- That's always a word --

Q Agronomy?

A Yes. But it's the other version of that word. It

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is not agronomy -- agricultural. I will use that. It is an easy out.

Agricultural programs with various land grant colleges and so forth in tobacco growing regions. The prime meridian, as I understand it, as a layman, is to address diseases and various afflictions that the tobacco plants develop at various stages in their growth.

Q The tobacco plant itself?

A The tobacco plant itself.

Q There is function, though, that is related to health-related concerns of users of products?

A Through the Council for Tobacco Research.

Q Right.

Where are they located? Do you know?

A I don't know.

Q Do you know who the present representative, if there is one specific person, with R.J. Reynolds Tobacco is to the Council for Tobacco Research?

A I don't know, but I would think that Bob Di Marco would be the fellow to ask. I think he would probably know.

Q I take it you don't know what form any promulgations from that organization take, or see anything from it directly yourself, then.

A No, sir.

Q You don't know --

A I never see them.

My understanding is that they are, much like most research is, published in the journals, medical journals and so

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forth. But I don't know specifically, and don't see them specifically, and wouldn't understand them if I did.

Q Do you know how long it has been in operation?

A I think -- my recollection is that it is over 20 years. I'm not sure exactly how long it has been, but it has been -- I think it was about 20 years.

But, again, Di Marco would be able to probably address that more directly.

Q Do you know of any other industry organizations that Reynolds Tobacco Company has been associated with or a member of since World War II?

A Industry organizations or associations?

Q Yes.

A Well, we have been a member of the Tobacco Institute since 19 -- well, it is in the interrogatory. I think it is 1958. I think it is. That's right. I don't remember the specific date. I think it was June.

Q Just generally, without going into the detail, what is the function of the Tobacco Institute?

A As I understand it, it is a lobbying organization for the tobacco industry at the Federal and at State levels.

Q Do you have any contact yourself or connection with the publications and or promulgations of the Tobacco Institute?

A No. I -- occasionally, I am not sure what the frequency is, I get a copy of their newsletter.

Q Do you know whether or not they have had in the past any research relating to potential hazards with the use of

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tobacco products?

A My understanding is that they are not -- that's not their function. Their function is essentially one of lobbying for the interests of the tobacco industry and the CTR is -- the Council for Tobacco Research is the group assigned with the mission of the kind of research you are referring to.

You asked from World War II what kind of trade -- or what trade associations. There are any number of tobacco distributorships, distributor tobacco industry organizations that the company participates in on a national, regional, local level, mostly trade associations -- to my knowledge, exclusively trade-association-type organizations of tobacco jobbers, people somewhere in the wholesale networks.

On the other end of the scale, I think we are members of tobacco growers' associations or at least honorary members or whatever you call it, non-voting members. We are not growers of tobacco, but we are supporters of the industry and so forth. Industry support groups.

Q To your knowledge, do any of those, or have any of those in the past had any interest -- obviously, they have an interest -- a direct concern, in an issue of any publication, newsletters and et cetera, having to do with the potential health hazards in the use of tobacco?

A I think from time to time any number of them, in the publication of their routine newsletters and whatever they call their communication vehicle to keep their members appraised of developments in the industry, will report on various claims that are being made on both sides of the

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controversy, but more as a matter of reporting and informing than as a matter of integrating any such --

Q Do you know of any research that they have sponsored, any of these organizations have sponsored into the health hazards problem or controversy?

A I am really not familiar with that activity. I am not really conversant with that activity beyond our own participation in the CRT. I'm not sure what these other groups have done.

Q Would this be better addressed to Dr. Di Marco?

A I would think that he would be in a position to give you an answer on that.

Q Now, you mentioned the interrogatories a short time ago --

(Discussion held off the record.)

(Brief recess.)

Q BY MR. KILBOURNE: In the Answers to Interrogatories, I would like to refer to the first one, and specifically to the response on page 2. Beginning at line 15 Reynolds states that, "It has not been scientifically established that cigarette smoking is the cause of human disease."

Do you know whether or not it has been suggested to anyone in Reynolds that there is a connection?

A We are certainly aware that there are some who claim that there is a connection.

Q Can you tell me, to the best of your knowledge, when anyone within Reynolds, as far as you know, was first made

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aware of this claim?

A I don't know. I don't know. I have no knowledge of that.

Q Did it predate your joining the organization?

A Yes. I'm sure it did.

Q Do you know of any specific person in the organization at this time whose primary concern is the study of this claim?

A No.

Q Do you know of any internal correspondence that relates in any way to discussion of the claim?

A Would you repeat the question to make sure I fully understand what you are asking?

MR. KILBOURNE: Why don't you just read it back?

(Whereupon the record was read as requested.)

THE WITNESS: Yes.

MR. WORKMAN: By "internal correspondence," do you mean inter-office type correspondence --

MR. KILBOURNE: Yes.

MR. WORKMAN: -- or do you mean correspondence from someone on the outside to Reynolds?

MR. KILBOURNE: No. Inside the company. To someone inside the company. This is what I was referring to. Such as a communication to an officer or director, or from or to Dr. Di Marco or his predecessor, someone of that authority.

THE WITNESS: Yes.

Q BY MR. KILBOURNE: Just generally, what is the nature of it?

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A The specific reference that I have in mind is simply discusses -- is a piece which simply discusses some of the claims that are made -- that are being made about the alleged health hazards of cigarette smoking, and is more of an information piece, brief, indicates -- points to some discrepancies or inconsistencies in some of the statistical references that are being made in those allegations, data that is overlooked or omitted, statistics selectively used to support the alleged association and which appears to conveniently ignore information within the same studies that would tend to damage the conclusions reached, that kind of thing.

Q Do you know how this originated?

MR. WORKMAN: What do you mean by "this," George?

MR. KILBOURNE: What he is referring to.

MR. WORKMAN: Okay.

THE WITNESS: Not specifically, no.

Q BY MR. KILBOURNE: What form does it take? Is it a letter or is it a report, or just a summary or what?

A It's essentially a summary.

Q In order to obtain a copy, how would I describe it so that someone would understand what I was talking about?

A As best I can recall, it is on the order of Update on Smoking and Health Controversy, or something of that order.

Q Do you know approximately when it came out?

A No. I don't. It is within the last year or so.

Q Do you know to whom it was addressed or who has custody of it at this time?

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A No, I don't.

Q To whom would I address an inquiry, then, in order to obtain a copy of it?

A I think the legal counsel.

Q Do you at this time recall what hazards were -- or potential hazards were discussed in it?

A No, sir, I don't.

Q Do you know whether or not lung cancer was discussed?

A I don't recall specifically.

Q I note that you smoke a pipe?

A I do.

Q Have you ever smoked cigarettes?

A I do occasionally.

Q I note that on the package of the Camels contains the legend, "Warning: The Surgeon General has determined that cigarette smoking is dangerous to your health."

You are aware that is on the pack of Camels?

A Yes, sir.

Q And you are aware that that has appeared on there since the middle '60's sometime, I believe?

A That version or --

Q Something substantially --

A -- something similar. Another type of notice, yes.

Q Right.

And you are aware in your position that this is a

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requirement at the present time that this appear on the packages?

A I am.

Q Before this warning appeared, was there any warning whatsoever, to your knowledge, that was ever placed on a package of cigarettes by R.J. Reynolds Tobacco Company?

A I don't know.

Q Do you have any knowledge from any source whatsoever that there was any information, before they were required to put this warning on there, that there may be a hazard from smoking?

MR. WORKMAN: Made I have that question back, please?

(Whereupon the record was read as requested.)

MR. WORKMAN: My difficulty, Counsel, is that in framing the question you are referring to a package of Camel cigarettes, which has a warning, and there have been other warnings or other language concerning warnings when they were first provided, and your question really isn't clear as to that.

Is your question, was there a warning on the package before a warning was required by the Congress to be placed on the package?

MR. KILBOURNE: No. My question is: Did Reynolds have any information from any source whatsoever before a warning was placed on the package that there may be a danger associated with the use of cigarettes?

MR. WORKMAN: Do you understand the question?

THE WITNESS: No. I don't think I do, really. No.

Q BY MR. KILBOURNE: Well, let me ask it this

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way: Before they were required to put a warning on there, do you know whether or not there was any indication or information in the hands of anyone at Reynolds that smoking may be hazardous to your health?

MR. WORKMAN: The question in that form assumes that smoking may be hazardous to your health, and that, of course, is one of the ultimate issues in this case, and in that sense it is argumentative.

But you can rephrase that question to take the argumentative aspect out of it.

And if you put it, "Did someone claim that it was hazardous or whether or not" -- that's fine. I will let him answer it if he knows the answer.

Q BY MR. KILBOURNE: Right. And you may not know, understandably.

Do you know whether or not on it had been suggested to anyone in the Reynold's organization, prior to the time that the warning was required to be placed on the package, that smoking may be hazardous to the user's health?

MR. WORKMAN: Let me have that one back.

(Whereupon the record was read as requested.)

MR. WORKMAN: You can answer it, Jerry, if you can.

THE WITNESS: I have no specific knowledge that claims of a potential health risk were known prior, but I am assuming, because I -- not having -- not at that time being part of the tobacco industry -- like most people were aware that people were making claims about a potential health risk.

Q Do you know of any?

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A Much earlier than action for warning labels.

Q Do you have any knowledge at this time when the first time would be that it came to the attention that such a claim was being made?

A No.

Q When were you first made aware that there was any claim being made that there was a health hazard associated with the use of tobacco products?

A Oh, Lord. That seems to me ever since I was a teenager or a child. I mean, someone was always -- there was always some claim that cigarette smoking was potentially harmful. Someone always seemed to have been claiming that. I can't remember when, specifically, it was, a date or a specific event.

My understanding is that claims of that has been -- of cigarette smoking -- have been around for years and years.

Q Do you know of any action that was taken by Reynolds, before the warning was placed on the package, to investigate whether or not there was a health hazard associated with the use of tobacco?

A I'm really not conversant with that history, that part of the history of the tobacco company. So I really can't say. No, I don't know.

Q Do you know of anyone in the organization who you feel would be knowledgeable on that subject?

A Well, you might -- you might try Bob Di Marco again, because his group maintains the record on most of the --

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on external -- or if it was on claims or so forth, that might be a good place to start. I don't know how far back his files go, as I mentioned before.

Q Has it ever been suggested to you that an asbestos worker or someone exposed to asbestos would be at a greater risk if he smoked to various lung problems?

A No.

Q Were you aware of that, that this has been said within the last twenty years?

MR. WORKMAN: Said by whom?

MR. KILBOURNE: Well, specifically, and originally by Dr. Spelakopf in 1964.

MR. WORKMAN: So the question is did he know that Dr. Spelakopf said something with respect to an association between asbestos and cigarette smoking in 1964. Is that the question?

MR. KILBOURNE: Right.

MR. WORKMAN: Do you understand the question?

THE WITNESS: I understand the question.

No. I don't believe I was aware of that.

Q BY MR. KILBOURNE: Were you aware that as early as 1952 or '53, that there were studies which indicated that asbestos workers were at greater risk to certain lung disorders if they also smoked?

MR. WORKMAN: I hate to object to you, George, but that question really does assume the facts, and they are not in evidence in this case, requires him to assume that there were such studies. If you rephrase the questions, "Are you aware of any studies prior to that time?" --

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Your question assumes that there were such studies, and, frankly, I don't know whether there were any such studies or not.

MR. KILBOURNE: I'll send you copies of them.

Q Did you know whether or not there were such studies in the early '50's which indicated that there was a greater risk to asbestos workers who also smoked?

MR. WORKMAN: Just for my benefit, "Were you aware of any study?"

MR. KILBOURNE: All right.

MR. WORKMAN: Thanks.

Q BY MR. KILBOURNE: As your attorney changed the question, were you?

A No. That really isn't my area of accountability within the company.

Q And again, I would assume you would suggest Dr. Di Marco to address this to possibly.

A I think that would be a good place to start, yes.

Q Well what is your understanding as to why that warning is on the cigarette package at this time?

A My understanding is that it is a requirement.

Q By Congress?

A Yes.

Q Do you know, or do you have any understanding as to why that requirement was made?

A I am trying to sort out that answer as between what I know or what one knows simply from being a part of the general public and understanding how Congress works, as opposed

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to being a part of -- an officer of the tobacco company.

My understanding is that as a result of the allegations in the Surgeon General's report claiming a causal link between cigarette smoking and various human diseases, that Congress felt impelled to require cigarette manufacturers to publicize that warning to cigarette smokers in, perhaps, the most direct way that one could imagine, and required the labeling on cigarettes and in cigarette advertising.

Q What is your understanding as to what specific hazards they are warning against?

A I am not sure exactly what -- by "disease" what they are talking about.

I think the phrase is -- that is used on the pack is, I suppose, deliberately rather broad.

MR. WORKMAN: Oh, I thought you wanted to see it.

THE WITNESS: Yes.

MR. KILBOURNE: Oh, I am sorry.

THE WITNESS: It is rather broad.

Q BY MR. KILBOURNE: Well, do you have any understanding in looking at that warning that appears on the one that I am handing you at this time, as to whether or not that warns against the possibility of lung cancer?

MR. WORKMAN: May I have that question back?

(Whereupon the record was read as requested.)

MR. WORKMAN: Is the question does he have an understanding as to whether --

MR. KILBOURNE: It warns against --

MR. WORKMAN: -- the warning on the package of Camel

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cigarettes, which you have handed to him, whether that warns against the possibility of lung cancer? Is that your question?

MR. KILBOURNE: Yes.

MR. WORKMAN: Does he have an understanding?

You know the warning really speaks for itself. It says what it says.

THE WITNESS: Cigarette smoking is dangerous to your health is what it says that the Surgeon General has determined.

Q BY MR. KILBOURNE: Now, what is your understanding as to what "dangerous to your health," those specific words mean?

A I -- I -- I'm having difficulty understanding exactly where it is that you are -- what you are trying to get at. "Dangerous to your health," is self -- I think is self-evident, and I think is deliberately broad.

Q Is it broad enough as far as you are concerned to include a warning of heart disease?

A Well, here again, the publicity put out by various associations and organizations on behalf of one cause or another that alleges a relationship between cigarette smoking and human disease, is in the body of popular knowledge. That is all around us. So that I suppose when one looks at that warning notice, you are not looking at that warning notice in a vacuum. It is not as if any one of us has seen it for only the first time and is left to wonder what they might be talking about.

There has been such publicity given over the last 30 years to the alleged link between cigarette smoking and any

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number of human diseases that I suppose when one looks at that, depending on whether -- how one has received all those messages, public service and otherwise, over the years, one's understanding of that whole campaign or series of campaigns, I think is reflected in the perception of that.

So I -- I mean I am having difficulty saying. When I look at that -- If your question is when I look at that do I specifically see this heart disease in there, certainly not because it is not referenced there specifically, nor is any other specific human disease.

But the public relations campaigns that has been so active against smoking all these years, obviously intrudes and persuades one's interpretation of that warning notice.

Q Would your answer be the same if I ask you the same question with respect to chronic obstructed pulmonary disease?

A I would think so.

Q And would your answer be the same if I asked you the same question directed towards emphysema?

A I would think so.

Q And would your answer be the same if I asked you the same question directed towards bronchitis?

A Again, I think it would depend on how persuaded, or jaded, perhaps, one has become after hearing all the anti claims against cigarette smoking.

To believe that the Surgeon General has determined that cigarette smoking is dangerous to your health -- and that means anything to anybody, any health risk that one could

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imagine.

Q Would your answer be the same if I asked you and directed it specifically towards lung cancer?

A I would think so.

Q And towards any other form of cancer which has been associated in the literature; such as gastrointestinal or lip or --

MR. WORKMAN: That assumes facts not in evidence, George, that any of these things have been associated in literature. You are asking am to assume that they have, and in that sense it is argumentative.

I really think he has given you the best answer he has. The warning speaks for itself, and he didn't phrase the language in the warning. What it means to him is not relevant.

What it meant to Harold Browner is relevant.

MR. KILBOURNE: All right. Let me then -- I will withdraw that question, and ask this:

Do you have any knowledge, from any source whatsoever, that there was any warning given to asbestos workers of a possible or alleged or claimed, however you want to phrase it, enhancement of the various risks if they were exposed to asbestos and cigarette smoking?

MR. WORKMAN: Any warning other than the warning that is mandated by Congress?

MR. KILBOURNE: Yes. As it appeared in its different forms.

THE WITNESS: No.

Q BY MR. KILBOURNE: Do you, as you sit here today,

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know of any information which anyone in the company has or could reasonably be expected to have, such as Dr. Di Marco, of any such claims on the joint effect of asbestos exposure and smoking?

A No.

Q Do you know whether or not there has ever been an inquiry by anyone in the company about whether or not such problem does exist over and above what has been alleged to exist in the general public if they are asbestos workers?

MR. WORKMAN: May I have the question back, please.

(Whereupon the record was read as requested.)

MR. WORKMAN: The question is compound, among other things, George. Why don't you break it down?

MR. KILBOURNE: It is inartfully worded. I got wound up.

MR. WORKMAN: Give it another shot.

Q BY MR. KILBOURNE: Well, let's see. Do you know whether or not it has ever been brought to the attention of anyone in the company, Reynolds Tobacco, that there has been a claim that asbestos workers are at greater risk if they are also smokers to any disease which I have mentioned?

A I don't know.

Q Would Dr. Di Marco be the one possibly to address this to?

A Again, I don't -- since I am totally unfamiliar with that specific area that you are in. I would only recommend that that would be a good place to start. I think he might have -- that would be a logical place for that.

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Q Do you have any information from any source whatsoever that anyone has suggested that people who are exposed to welding fumes are at any greater risk if they are also smokers to any of these health hazards?

A I don't know.

Q Have you ever heard the term "synergism"?

A Yes, sir.

Q What is your understanding of what it means?

A As I understand it, synergism is the effect of two or more elements, factors working together which produces an effect that would be greater than the effect produced by the individual elements or factors working alone.

Q Could I ask you how long you have had this understanding, if you recall?

A Oh, I don't recall. Years. Synergism is referred to in management schools often.

Q In a different context?

A No. Essentially the same context, two elements, factors people, of different disciplines working together.

I mean it is a common English word. I think it has been in management parlance for a number of years. That's -- that's my frame of reference in terms of it.

Q Do you know whether or not it has ever been used in connection with the use of tobacco for asbestos workers?

A I understand that there have been some allegations, but only as a result of the interrogatories, and in discussing or preparing for the deposition with counsel.

Q You were not aware before you saw the references

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in this particular lawsuit that there had been made an association with tobacco smoking and asbestos?

MR. WORKMAN: He was referring to interrogatories, and there was a question in the interrogatories as I recall it --

MR. KILBOURNE: Yes.

MR. WORKMAN: -- dealing with the subject.

THE WITNESS: There was, and then I had, in reviewing the interrogatories, pursued it with counsel before I, of course, I verified the interrogatories, and that is, as best as I can recall -- was my first time I was made aware of that, at least to the best of my knowledge.

Q BY MR. KILBOURNE: Moving to interrogatory No. 9. Directing your attention to page 6, beginning at line 9. "Reynolds states that it does not have any information that establishes scientifically that cigarette smoking is the cause of lung cancer in humans."

I am intrigued with your use of the word "scientifically." Can you explain to me what you mean by that response?

A I will try to give you my layman's understanding or interpretation of the essence of what that means.

My understanding is that something that is scientifically verifiable or provable can be duplicated, repeated, reliably with the same results in appropriate experimental -- under appropriate experimental conditions as well as under other methods of scientific observation, whether contrived or otherwise occurred.

The essence of the company -- the tobacco

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company's position, and my position, as I understand it, is that, in fact, although there have been claims made to the contrary, in fact, it has not been scientifically determined that cigarette smoking is the cause of lung cancer or any other disease in human beings in that sense.

Q Are you aware of any statistical studies which would appear to find otherwise?

A I am not sure I understand that question.

Q Well, let me ask you this: Does Reynolds have in its organization any theoretic mathematicians?

A I'm not certain. I don't know.

Q Does it have within its organization any physicist?

A I don't know specifically.

Q Does it have within its organization any physiologists or medical doctors who specifically are concerned with epidemiology?

A I don't know simply because I am not privy to -- I have no knowledge of the academic or professional credentials of the people employed by the company other than those in my own organization.

Q Does it have within the organization any person or persons who are primarily concerned with statistics?

A Yes. Yes. I am sure there are some.

Q And you have some possibly under you who report to you?

A No. I have no statisticians, per se, no.

Q In what use does Reynolds make, if you know, of

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the services of statisticians?

A I -- I'm not sure what the specific job descriptions are, but one would assume that a statistician would be employed to manipulate statistical data obtained from any number of sources on any number of subjects in order to make the raw data, perhaps, more intelligible to non-statistician types or those of us that aren't trained or gifted in that particular area.

Q Do you have any idea for how many years there have been statisticians within the organization?

A No, I don't.

Q You are aware, are you not, that the use of statisticians to make sense out of raw data, as you termed it, is a function which is relied on in business?

MR. WORKMAN: Well, now, may I have that question back?

(Whereupon the record was read as requested.)

MR. WORKMAN: Well, I assume you mean it is one of many functions relied upon in business, and that statisticians in all cases can make sense out of raw data. Those are the problems that I have with your question. It is entirely too broad to be relevant in the sense of calculated to lead to the discovery of admissible evidence.

If you want to reframe it, narrow it, why don't you put it to him in that way?

MR. KILBOURNE: I am also cognizant of Rousseau's warning that there are three kinds of fools: Plain fools, damn fools and statisticians.

MR. WORKMAN: We are with you on that one, George. So

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stipulated. Now you are getting our point.

Q BY MR. KILBOURNE: With respect to the use of statisticians, one function, as Mr. Workman indicates, has been to help interpret data in business, is it not?

A That's one of the functions.

Q And this is used in your field, is it not, in market surveys and things of this nature where you are looking at the cross sections of population, where you are looking, for instance, at the possible or probable use of new product before it is introduced?

MR. WORKMAN: Just to clarify, his field is finance and accounting. Is your question personally directed to him or is it broader than that?

MR. KILBOURNE: I was personally directing it to him because presumably he has been in management, business -- business administration from his background.

Q And you have had occasion in the past, have you not, to rely upon statistical data?

A I have in the past used as one element of business activity statistical data.

Q Is this --

A I would hesitate, however, to -- I have a problem with using the word "rely" in that it, statistical data, is simply one of many tools that are available in the business environment.

Q All right. I will accept that.

Do you have any criticism, then, of using statistical data as a tool in the determination of whether or

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not health hazards existed from the use of tobacco products?

THE WITNESS: Would you repeat the question, please.

(Whereupon the record was read as requested.)

THE WITNESS: Yes. I have a criticism of the use of statistical data in the sense in which the question was phrased, suggesting that statistical data alone can lead to the determination of a link between smoking -- That, it seems to me, is the crux of the rather one-sided dialogue that has been going on for some 30 years.

The use of statistical data, it seems to me, is appropriate to open up areas of investigation, which then has to go beyond mere statistical study, and get into the area of what I referred to before in my layman's definition of scientific study in order to substantiate, prove or disprove, the inferences that statistical information provides.

Q BY MR. KILBOURNE: Now, correct me if I am in error, but are you saying that the probability, then, of lung cancer arising is not scientifically determined at this time, and therefore, you, R.J. Reynolds Tobacco Company, reject causation or the causative factor?

THE WITNESS: Maybe you could repeat that question for me, please. I want to make sure I understand the full --

(Whereupon the record was read as requested.)

THE WITNESS: I am -- I have got a problem with the end of that question, because I am not just hearing it --

MR. KILBOURNE: All right. Let me.

THE WITNESS: It seems to me that there was something left out of that.

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MR. KILBOURNE: All right. I think you are probably right. Perhaps I am not going on far enough.

Q Are you aware, first of all, that it has been suggested by critics of the tobacco company industry, that the probability of lung cancer is enhanced by the use of tobacco products?

A I am aware that there are some claims to that effect, yes.

Q Are you aware that the probability of lung cancer increase has also been suggested to non-smokers by the exposure to asbestos?

MR. WORKMAN: Question back, please.

(Whereupon the record was read as requested.)

MR. WORKMAN: Do you understand the question?

THE WITNESS: No.

MR. KILBOURNE: I am asking --

MR. WORKMAN: I think you can clean that one up, George.

Q BY MR. KILBOURNE: I am asking the same thing about whether or not you are aware that it has been suggested that asbestos, in and of itself, has been suggested as a causative factor in causing lung cancer.

A Let me answer that question this way: I am aware as of this morning because of our prior discussions, at least, that there is some claim of an increased risk among peopel dealing with asbestos or working with asbestos.

However, your question -- I'm not so sure exactly how I became aware of it beyond -- I'm finding more about the issues in our conversation back and forth and the discussion

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this morning than I think I was aware of prior to this point.

Q Is the same thing also true with respect to our discussion on synergism, the combined effect as alleged between asbestos and smoking as a causative factor in causing lung cancer?

A Well, other than, as I referred to before, the reference in the interrogatories, where that synergistic effect was mentioned. I did discuss that with counsel prior to signing the interrogatories, and felt that I had a clear enough understanding to be comfortable with the answer as given in the interrogatories, which was at that point consistent with my knowledge.

Q Now, going back to the warning which appears on the cigarette package. Do you have any understanding, as you sit here today, that that warning is broad enough to warn of the possibility of any enhancement or synergistic effect as to an asbestos worker who also smokes, about the increased possibility or probability of lung cancer?

MR. WORKMAN: George, I am going to have to object to that question and the form of the question on the grounds it is argumentative because you are asking the witness to express what he understands a warning mandated by the Congress to mean. If you want to know what it means, I suppose you have to go back and look at the Congressional hearings that preceded it and lead up to it, and the determination that, at least in the mind of the Congress of the United States, that was an adequate warning to anyone who was using the product.

Whether or not they are an asbestos worker doesn't

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make -- didn't seem to concern the Congress.

MR. KILBOURNE: Okay.

MR. WORKMAN: But my real problem is I don't want you arguing with him or any witness as to what the warning means. The warning means what it says.

MR. KILBOURNE: Okay. I just wanted to make it clear that when we start talking about assumption of risk that is not included. That's all.

MR. WORKMAN: Well, I am not agreeing with whether assumption of risk is included or not. We will argue that when we are arguing jury instructions.

Q BY MR. KILBOURNE: Do you know, as you sit here today, what the word "carcinogen" means? Or what -- perhaps, I should ask what your understanding of what the word "carcinogen" means.

A My understanding of that word, again, in layman's terms, is any agent which has been scientifically found to be capable of producing cancer in just about any form of plant or animal life, as I understand it. That is purely a layman's understanding of that word as it is used in the press and the media and common parlance.

Q Can you give me an example of something which you understand to be, to use your term, scientifically found to be capable of producing cancer?

MR. WORKMAN: The question is, does he have an understanding of something science has found to be the cause of cancer? Is that your question?

MR. KILBOURNE: Right. In effect, he has used the word

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"scientifically" -- he keeps using this to modify --

MR. WORKMAN: Yes, and that's the language in the interrogatories, too. Go ahead.

MR. KILBOURNE: And I am asking him to give me an example, if he can, of such a substance from his definition.

THE WITNESS: I don't believe there are any because I don't believe science has, in fact, yet found something -- I could been wrong, but I don't believe that science has yet unlocked the mystery of just exactly what it is that causes any one of the variety of manifestations that are generally found under the heading of cancer; and which is why my understanding is that most substances that are referred to, I think, used the word "alleged" or "reported to be" and so forth, simply because there has yet been no proof.

Q BY MR. KILBOURNE: Is this based primarily on your understanding that as of now the actual mechanism by which a cancer can be predicted has not been set forth by science?

A I think that's -- I'm not so sure I would have said it that way myself because I get quickly deep, as most layman do, into an area that is rather baffling. But on immediate reflection, I think I would say that probably agrees with my observation.

Q Do you know of anyone within Reynolds Tobacco who has been concerned with the study of alleged carcinogens?

A No.

MR. WORKMAN: Well, let me -- I can't strike the answer, but I am concerned about your use of "concern." You know, "concern" just might be aware of it and worry about it, but

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what you really meant by that question is someone who is directly involved in doing something about it?

MR. KILBOURNE: Or making any inquiry or investigation, yes.

Q Would this come under, for instance, Dr. Di Marco's domain, if there has been any such inquiry?

A I think Dr. Di Marco would be in a better position to answer that. I really don't know.

Q All right. Do you know whether or not there are any additives which are used in final tobacco products as they are placed on the market, which are non-tobacco substances?

THE WITNESS: Would you please repeat that question?

(Whereupon the record was read as requested.)

THE WITNESS: Yes, there are.

Q BY MR. KILBOURNE: And these are commonly done, are they not, for flavoring purposes and for enhancement of various qualities of the smoke and burning characteristics, things of that nature?

A That's my understanding of their purpose.

Q And these include many, many substances which are trade secrets of the various tobacco companies, does it not?

A That's true.

Q And you are aware, or are you aware that in recent years the Surgeon General has also become concerned with the use of those additives in tobacco products?

MR. WORKMAN: Object to the form of that question, George, on the grounds that it is argumentative and that it requires the witness to assume what the Surgeon General has

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determined.

MR. KILBOURNE: All right. Let me withdraw the question.

MR. WORKMAN: I don't know whether the Surgeon General has determined that or not, and if so, what Surgeon General has determined that, whether they have all determined that or so forth, and for that reason the question is objected to.

MR. KILBOURNE: I will withdraw the question.

Q Have you seen any of the reports of the Surgeon General of the United States with respect to the use of tobacco?

A No.

Q Do you know whether or not there has ever been any concern expressed by the Surgeon General on the use of additives?

A No. I don't believe so.

Q Do you know whether or not there was an attempt in the '50's to find a "safe cigarette"?

MR. WORKMAN: The question is pretty broad, George. Attempt by whom?

MR. KILBOURNE: By the tobacco industry or anyone in the tobacco industry.

MR. WORKMAN: Does he know whether anyone in the tobacco industry in the '50's attempted to find a safe cigarette? I suppose you are going to have to tell me what you mean by a safe cigarette.

MR. KILBOURNE: Well, since that is the way it was reported, I will have to go with the language.

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Q Do you know whether or not there was any concern during that period by anyone about finding a "safe cigarette"?

A I don't know. That was long before I was associated with the company. I don't know anything about that period.

Q Was that before you started smoking?

MR. WORKMAN: You better give him the date, if there is such a thing. You better tell him what the date is.

You said in the '50's. That's ten years.

When did you start smoking?

THE WITNESS: I would venture to say it was probably around early '50's, '53, '54, somewhere in there.

Q BY MR. KILBOURNE: Do you know whether or not there has been anyone investigating the effect of putting additives in tobacco products within Reynolds Tobacco Company?

THE WITNESS: Would you repeat the question, please.

(Whereupon the record was read as requested.)

THE WITNESS: I have to answer that in the context of the primary mission of research and development, who are continually monitoring the various top dressings and formulas that are applied to the products to determine the effect of those on the -- on final product, and in what we call blend maintenance and product maintenance activities.

So from that perspective, yes, that's part of their ongoing mission, is to monitor the performance of the final product.

Q BY MR. KILBOURNE: Do you know whether or not that monitoring has included the investigation of statistical results

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or statistical incidence of possible health hazards from the use of such additives?

MR. WORKMAN: The question back, please.

(Whereupon the record was read as requested.)

THE WITNESS: I don't know.

Q BY MR. KILBOURNE: Again, I assume that would better be addressed to Dr. Di Marco.

A I agree.

Q Do you know at this time whether or not additives are used in cigar wrap?

A I don't --

MR. WORKMAN: Did Harold Browner smoke cigars, George?

MR. KILBOURNE: I don't know, but I think this goes to knowledge, generally, of effect.

MR. WORKMAN: It is clearly not relevant unless he did.

MR. KILBOURNE: But it could lead to probable --

MR. WORKMAN: I would will let him answer that, if he knows.

THE WITNESS: I don't know.

MR. KILBOURNE: Which I believe would be the same of any tobacco product, whether it is filters or other products.

THE WITNESS: I don't know the answer to that last question.

Q BY MR. KILBOURNE: Do you know whether or not in the 1950's there was a change in the comparative number of filter cigarettes which were produced by R.J. Reynolds Tobacco Company in relation to non-filter?

A During the ten-year period of the 1950's --

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Q Yes.

A --is the gist of your question?

I don't have the specific numbers or ranges, but, yes, I think looking at the beginning and end of that decade, the close of the decade would have found many more filter cigarettes as part of our total composition, total output as opposed to the beginning.

Q And it was during that decade, was it not, that Winstons and Salems were placed on the market?

A That is my understanding, yes.

Q Do you know what the reason was for placing those two filter cigarettes on the market during that period?

A Not specifically, no.

Q Do you know generally?

A No.

Q Do you know whether or not other manufacturers at the same time were shifting more to filter cigarettes, with the possible exception of one of your competitors?

MR. WORKMAN: George, that question is pretty ambiguous as far as does he know whether or not any of Reynold's competitors were shifting to --

MR. KILBOURNE: Filter cigarettes.

MR. WORKMAN: -- filter cigarettes in the 1950's. Is that the question?

MR. KILBOURNE: Right.

MR. WORKMAN: Do you know the answer to it?

THE WITNESS: No. I don't know whether it occurred in the '50's or later.

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Q BY MR. KILBOURNE: Do you know the reasons why, if it is a fact, that the filters began to be produced more than non-filters?

A Because that was the presentation in which more and more smokers desired their cigarette.

Q Do you know whether or not the fact that certain people and organizations had alleged that there were health hazards connected to the use of non-filters had anything to do with such a change?

A Not having been part of the industry or the management of the company at that point, and really not having much information about that time, I -- I really can't -- I really have no information as to what the environment was at that point, as I recall.

I was not involved in the tobacco industry at the time. I was --

Q Do you know of anyone in the organization who would have information, who would have been connected with management at the time that this was occurring who we could discuss this matter with?

A I am really not sure of just what the organization was and who was in place during that period. I don't have a name or names to give you at this point because I really don't know who was involved at that point.

Q In business, would this be someone who would be doing an allocation of production as a management decision? Who would make such a decision?

What I am trying to do is to find out where I

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could go to discuss this with someone in the organization, or who was associated with the organization who would have made or have been a part of making the management decision to make a shift from non-filter to filter productionwise.

A Well, let me clarify one point that I have trouble with. First of all, I don't know the individuals, but in a consumer products company, I think the last place one goes to determine what the consumer wants is the factory floor. Otherwise, we would have all black model T's and their successors running around. Henry Ford, I think, proved that.

Now, as to where that decision was consciously made in the company, to begin introducing a presentation that would be more acceptable to smokers than their present version of cigarettes, I -- I really don't know because, again, I am not familiar with what the structure of the company was during that time.

But in my estimation it would certainly not be in the manufacturing area.

Q Are market surveys routinely made before a new product is placed on the market?

A They are now, yes.

Q Do you know for approximately how long this has been a management practice?

A I -- marketing research data -- using marketing research data as a tool has been employed within the company for the last several years. How far specifically it goes back in our history, again, I have no knowledge of.

It was in place when I joined the company in the

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late '60's simply because many of the market research people became part of the market research department of the foods company. Some of them had come -- some of the people had come from the tobacco market research department. So I know it goes back at least that far.

Q What department is this under in the tobacco company?

A It is under the marketing development department.

Q And who at the present time is head of that?

A Of the marketing development department?

Q Yes.

A That is Lawrence W. Hall.

Q Is he located in Winston-Salem?

A He is.

Q Do you know of any information, in-house material, I may have referred to this before, which has made a study, other than this survey that you previously mentioned, of the possibility of health hazards related to the use of tobacco products?

MR. WORKMAN: May I have that one back?

(Whereupon the record was read as requested.)

MR. WORKMAN: Okay. That was the pamphlet that he described earlier?

MR. KILBOURNE: Yes. Yes. The summary.

MR. WORKMAN: And by "in-house," do you mean to exclude the Council for Tobacco Research, which he testified --

MR. KILBOURNE: Yes.

MR. WORKMAN: -- was the function of the industry that

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looks into the health hazards or lack of health hazards of cigarette smoking?

MR. KILBOURNE: Right. I was asking specifically if there was anything else. I didn't ask the limited question before, but I am asking it now.

MR. WORKMAN: Okay. Go ahead.

THE WITNESS: Okay. Give me the first part of the question again. I am sorry.

(Whereupon the record was read as follows:

"Q Do you know of any information, in-house material, I may have referred to this before, which has made a study, other than this survey that you previously mentioned, of the possibility of health hazards related to the used of tobacco products?")

THE WITNESS: Let me go back and correct one statement in that question.

I don't think I referred to a survey. I referred to a top-line summary, which recapped. It was not a study that was done, and then reported on. It was simply a compilation of published data relevant to the -- some of the claims that are made.

The answer to the question is no, I am not aware of any.

Q BY MR. KILBOURNE: Can you identify for me at this time any information which was received from the Council for Tobacco Research on the general topic of health hazards?

A No, sir.

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Q Do you know how far back their association with that organization goes?

A No, I don't. I think I mentioned earlier that my understanding was that we have been associated with that group for some time, perhaps, since its inception, but I really am not aware of the dates or the length of our association and support of the organization.

Q Are you aware of any research which has been done by the Tobacco Institute which has been made available to R.J. Reynolds Tobacco Company?

MR. WORKMAN: I think he testified the Tobacco Institute doesn't have anything to do with -- significant to do with smoking and health.

MR. KILBOURNE: Right.

MR. WORKMAN: Did you mean Tobacco Research?

MR. KILBOURNE: No.

MR. WORKMAN: I am sorry.

Q BY MR. KILBOURNE: Specifically about the Tobacco Institute. Whether or not you know whether or not they ever conducted any research which was made available to R.J. Reynolds.

A Any research of --

Q -- health hazards --

A -- health hazards.

Q -- or health research.

A Not to my knowledge.

They have occasionally reported in their publications and so forth on the efforts of others.

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I am not aware of any --

Q Are you aware of any research by either the Council for Tobacco Research or the Tobacco Institute, on the effect of additives?

A No.

Q Do you know of anyone at R.J. Reynolds who has ever expressed an opinion as to whether or not there is a connection between health hazards and the use of tobacco products?

THE WITNESS: Would you repeat that question, please.

(Wheruepon the record was read as requested.)

THE WITNESS: Who has expressed an opinion. I am having trouble with that specific wording.

Could you read just that part of it again, "Who has expressed an opinion"?

(Whereupon the record was read as follows:

"Q Do you know of anyone at R.J. Reynolds who has ever expressed an opinion as to whether or not there is a connection between health hazards and the use of tobacco products?")

THE WITNESS: I don't know how I can answer that question because I -- I think it is the position of the company that the -- and the officers and those of us involved in it, that there is an open question as to the possibility of a link, and there has been a lot of discussion involved with -- and a lot of effort put toward pursuing a scientific resolution, or scientifically valid resolution to that open discussion.

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I am not sure that is the answer you were looking for, but it is the only way I can express that because I think -- I have never -- I have never personally heard anyone within the company seriously question the fact that the issue is, in fact, an open -- an open one.

Q BY MR. KILBOURNE: And this is based, I take it, upon the failure of anyone to show scientifically the specific cause of cancer?

MR. WORKMAN: No. No. No. Wait a minute. Wait. Wait. Your question was was he aware of whether or not anyone ever discussed, and now you are coming back, I think, somewhat arguing with him, as to what his prior answer was based on.

Q BY MR. KILBOURNE: Well, is that the basis of it?

MR. WORKMAN: Is what the basis of it?

Q BY MR. KILBOURNE: The fact that there has not been a "scientific determination" made as to the exact cause of cancer?

MR. WORKMAN: You weren't talking about the exact cause of cancer anyway. You were talking about health hazards from the use of tobacco products.

So now you are throwing a new question at him, and if you want to rephrase the question so that it is complete within itself, why, go to it.

MR. KILBOURNE: Well, let's make it broader than I was --

Q At the suggestion of your counsel, is the reasoning why that this is still an open question because their

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official position is that there is no scientific basis for the saying that tobacco smoking creates a health hazard?

A I think that's one principal element for that position. The other being that in the statistical data that is invariably cited by those who would conclude a causal effect from cigarette smoking, that there are significant gaps and contradictions in the statistics that are available in the results of published studies which have been quoted, not necessarily by tobacco company representatives, but by independent scientists as well, who question the validity of some of the assumptions that have been made, or conclusions that have been drawn from selective use of statistical data.

Q When you refer --

A So it is wider than simply -- It is a wider issue than there simply not being scientific proof. In addition to there not being scientific proof, there are significant gaps in the statistical data that is, in fact, being quoted and is, in fact, the basis of the arguments being put forward.

Q Now, specifically, do you have any of those published studies in mind at this time?

A No. I don't know. No.

Q Could I ask where you, then, obtained this information?

A From the individuals from the -- even general consensus from individuals within these various departments that study these documents, reports, etc.

Q And specifically who are the individuals you are referring to?

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A There are no names that come to mind. It is primarily the research and development group that monitors and evaluates the results of this reports.

Q Is there anyone other than Dr. Di Marco in that group who has primary responsibility for this ongoing study or monitoring?

A I really don't know how his group is organized and who has accountability for what. So I -- I think he would be in a position to inform you as to who -- let you know who does what.

Q To your knowledge, is there anyone outside of Dr. Di Marco's group who would be involved in this monitoring?

MR. WORKMAN: Still within the company?

MR. KILBOURNE: Yes. Still within the company.

Q So that if I go specifically to Dr. Di Marco, do I get the person, then, who could probably explain, to the best of your knowledge, how this is handled?

A To the best of my knowledge, I think that's correct. I am not aware of anyone --

Q I am excluding for the time being, the information from the Council for Tobacco Research.

A I understand that.

Q Right.

And I take it you don't know the individuals who have liaison with them. I think I asked you that, and you couldn't identify them.

A No, I don't.

Q Do you know whether or not there have been any

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individuals, organizations or anyone outside the company, other than the ones we have mentioned, who have done any investigation into or made an evaluation of the studies relating to health hazards?

THE WITNESS: Could you repeat the question, please?

(Whereupon the record was read as requested.)

THE WITNESS: I know of -- I know of no individual or organization by name. None comes to mind immediately, but I believe that there is a fair body of literature available representing the efforts of organizations throughout the world that have been engaged in some aspect of this, the kind of research you are asking me about.

Q BY MR. KILBOURNE: Do you know if there is someone other than Dr. Di Marco who I could go to who would be the most knowledgeable person in the company for that information?

A No. I can't -- I can't think of any.

Q Do you know whether or not there are any epidemiologists employed in the R.J. Reynolds Tobacco Company who do any of this aspect of monitoring?

A I don't know.

Q Do you know whether or not there has ever been any concern expressed by anyone inside or outside the organization, R.J. Reynolds Tobacco Company, that there is an addictive effect to the use of tobacco products?

THE WITNESS: Would you please repeat that question?

(Whereupon the record was read as requested.)

MR. WORKMAN: Do you mean by your question whether or not there is an addictive effect to the use of tobacco products?

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Is that correct?

MR. KILBOURNE: Correct. Any investigation into whether or not --

MR. WORKMAN: Do you understand the question?

THE WITNESS: No. I really don't understand the question.

Q BY MR. KILBOURNE: Do you know whether or not anyone has ever suggested that allegedly there is an addictive effect in the use of tobacco products?

A I understand that there have been certain claims made by individuals or groups outside the company that cigarette smoking is addictive,

But, again, my understanding of cigarette smoking is that it is an acquired habit, and it is not addictive, and that objective tests to that effect tends to support that conclusion. At least that's my understanding, that it is a habit, from obviously, millions of people have stopped smoking.

Q Are you saying, then, that it is your understanding that there is no physiological effect from smoking?

A No. I, here again, we are getting into an area that is out of my -- my particular field, but my understanding of physiological effects is practically anything that we ingest has some effect on our body one way or the other, a drink of water, or food that we eat, air that we breathe.

To say that smoking doesn't have any effect, any physiological effect is -- at least my understanding is that -- or cigarette smoking does have some effect, but it is not a

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particular effect.

Q Do you have a source of authority within the company that you are citing for that statement?

A No. No specific or even general authority. It is just my understanding of the issue. Again, it is a layman's understanding of the discussion that I very readily get out over my depth in.

Q Is there at the present time any research, to your knowledge, being conducted of the products of combustion of tobacco within the company?

A I'm not sure. I don't know.

Q Has there been in the past, do you know?

A I really don't know.

Q Do you know whether or not there has been any outside the company from which the information has been given to the company?

A My knowledge in that area is virtually nil. I really don't know.

Q Is this better addressed, again, to Dr. Di Marco?

A I believe it would be, yes.

Q From the questions that I have asked, do you have any suggestions as to anyone, other than Dr. Di Marco and the one or two other individuals that we have named, which would be able to supply answers more readily than you have here today? Not that I want to wish anything over on them, and I won't tell them you said so.

They might enjoy a trip to California.

MR. WORKMAN: Sure, if the weather is as nice as this.

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THE WITNESS: No. I don't know of any individuals.

This is not to say that I think that Dr. Di Marco is going to have all the answers, or any of the others, because I am not sure that that is their area, and they will have to answer as best as they will, to the best of their knowledge.

But I can't think of anyone else in the area that we covered that --

Q BY MR. KILBOURNE: Can you tell me where the Council for Tobacco Research is located?

A No.

Q You don't have any more information on it at this time?

A No.

MR. KILBOURNE: I think that's all that I have.

MR. WORKMAN: I have no questions.

Can we stipulate that, notwithstanding the provisions of the Code of Civil Procedure, Mr. Gunzenhauser can sign it in the presence of a notary public of the State of North Carolina, and for the County of Forsyth?

THE WITNESS: F-o-r-s-y-t-h.

MR. KILBOURNE: We certainly can. At his convenience.

(Whereupon the deposition was concluded.)

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STATE OF NORTH CAROLINA)
) SS.
COUNTY OF FORSYTH)

I, _____, a Notary Public in and for the County of Forsyth, State of North Carolina, do hereby certify:

That on the _____ day of _____, 19___, before me personally appeared _____ the witness whose deposition appears hereinbefore;

That the said witness was by me duly advised of the right to make such changes and corrections in the within transcript as might be necessary in order to render the same true and correct;

That the said witness stated to me that the said deposition had been read to or by him, and he, having made such changes and corrections as he desired, thereupon subscribed and swore to said deposition in my presence.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office this _____ day of _____, 198___.

_____
Notary Public in and for the County of Forsyth, State of North Carolina

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, Linda Lee Elford, CSR No. 4715, a Notary Public in and for the County of Los Angeles, State of California, do hereby certify:

That the foregoing deposition of GERARD R. GUNZENHAUSER, was taken before me pursuant to Notice at the time and place, therein set forth, at which time the witness was put on oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed into typewriting;

That it was stipulated by counsel that said deposition may be read, corrected and signed by the witness before a Notary Public of the State of North Carolina, and for the County of Forsyth.

That the foregoing deposition is a true record of the testimony and of all objections made at the time of the examination.

I further certify that I am neither counsel for nor related to any party to said action nor in any wise interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 24th day of February, 1984.

Linda Lee Elford

Notary Public in and for the County of Los Angeles, State of California

OFFICIAL SEAL
LINDA LEE ELFORD
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Exp. Dec. 25, 1986

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